IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos. 38 and 39 of 1989
Date of decision:22.12.2006

M/s Avon Cycles (P) Limited, Ludhiana

....Petitioner

versus

The Commissioner of Income Tax (Central) Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Akshay Bhan, Advocate, for the assessee.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal) arising out of its order dated 28.1.1987 in ITA No.962/chandi/86, for the assessment year 1983-84 :-

Questions in RA No.25

"1. Whether, on facts and in the circumstances of the case, the amount of Rs.67,21,118/- earned on the sale of import entitlements was to be included as the business income of the applicant?

2. Whether, on facts and in the circumstances of the case, the amount of Rs.79,88,849/- received by way of cash subsidy (CCS) was to be included as the business income of the applicant?"

Question in RA No.49

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that lodging expenses of the foreigners in the Hotels are not in the nature of 'entertainment' and not hit by the provisions of Section 37(2) of the Income Tax Act?"

The assessee received income from sale of import entitlements

and also received cash subsidy. The Assessing officer held the amount of income earned on sale of import entitlements to be taxable. It was also held that the cash subsidy received by the assessee was also taxable.

The assessee made a clim for deduction of expenses of foreigners which was disallowed by the Assessing Officer under section 37 (2A) of the Income Tax Act, 1961 (for short, 'the Act') on the ground that the same was in the nature of entertainment. The claim of the assessee was, however, upheld by the CIT(A). The Tribunal upheld the finding of the CIT (A) and held that expenditure was necessary for the business of the assessee.

We have heard learned counsel for the parties and perused the findings recorded.

We proceed to answer the questions referred as under.

Re:Q.Nos.1 and 2 in RA No.25

We find that vide Finance Act 1990, Clause (iiia) has been added to Section 28 of the Act w.e.f 1.4.1967 to the effect that profit on sale of import entitlements was income under the head "Profits and gains of business or profession". The said provision has been upheld by the Delhi High Court in **Aero Leather P.Limited v. UOI and others**, (1992) 194 ITR 7, following judgments of the Hon'ble Supreme Court in **Navnit lal C.Javeri v. KK Sen**, (1965) 56 ITR 198**, Navinchandra Mafatlal v. CIT** (1954) 26 ITR 758, **Lohia Machines Limited v. UOI,** (1985) 152 ITR 308, **Ujagar Prints v. UOI** (1989) 179 ITR 317 and **CIT v. P.J.Chemicals Limited,** (1994) 210 ITR 830. Similarly, Clause (iiib) was added to section 28 by the same amendment to the effect that cash assistance received by the Government against export was income. The Rajasthan High Court in **CIT v. Radha Madhav Gum Factory**, (1996) 217 ITR 355 and the Delhi high Court in **CIT v. Smt.Maya J.Daryani**, (1998) 231 ITR 554, after referring to the said amendment held that cash assistance for export has to be treated as income.

Referring to the above judgments, this Court examined the question in ITR No.32 of 1991, **The Commissioner of Income Tax (Central) Ludhiana v. M/s Hind Woollen & Hosiery Mills (P) Limited, Ludhiana,** decided on 7.11.2006 and answered the question in favour of the revenue and against the assessee.

Accordingly, the questions referred are answered in favour of the revenue and against the assessee.

Re:Q.No.1 in RA No.49

In view of our judgment rendered today in ITR Nos.26 to 29 of 1989 (**The Commissioner of Income Tax, Patiala v. Shri Ved Parkash Aggarwal, Ludhiana)**, the question referred is answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 22, 2006
'gs'

(Rajesh Bindal)
Judge